

OLC 75-1995

OGC 75-2958

18 August 1975

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION :  STATINTL

SUBJECT : Section 2 of S. 796

1. Subsection 2(1) of S. 796 is intended to implement a recommendation of the Administrative Conference, which is the subject of an extensive article in the Michigan Law Review (Volume 71, No. 2, February 1972) by Professor Bonfield of the University of Iowa. Subsection 553(a)(1) of Title 5 provides that the rulemaking requirements of section 553 apply except to the extent that there is involved a military or foreign affairs function of the United States. Under the amendment, functions of that type are exempt only if they are classified under an Executive order. (The language used is identical with that of exemption (1) under the Freedom of Information Act.) Without attempting to determine what Agency actions, if any, amount to rulemaking, it is believed there is no reason to object to this amendment as it would seem highly probable that any CIA rulemaking which is not classified could be conducted under normal rulemaking requirements, that is, under the provisions of section 553, without difficulty. Moreover, the exemption is also broader. The current exemption applies only to the extent that there is involved "a military or foreign affairs function of the United States." The amended version would apply except to the extent that there is involved "a matter pertaining" to a military or foreign affairs function of the United States.

2. The proposed amendment to subsection 553(a)(2) (see section 2(2) of the bill) would be amended by narrowing that exemption from the current rulemaking requirement. As amended, subsection 553(a)(2) would exempt only to the extent that there is involved "a matter relating to agency management or personnel." The exemption now applicable to the extent that there is involved a matter relating to "public property, loans, grants, benefits or contracts" would be deleted. This deletion appears to be of little or no significance to the Agency. With the possible exception of the contracts area, it seems probable that we would have no such areas for rulemaking. Moreover, any that we do have would still be exempt by the amended provision which exempts matters pertaining to classified military and foreign affairs functions

of the United States. Again, to the extent that our contracting is of an unclassified nature, compliance with the amended 553(a)(2) should not be difficult.

3. The amendment proposed by subsection 2(3) would modify procedural requirements of implementing certain existing exemptions and, I believe, is unobjectionable.

STATINTL



Associate General Counsel